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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/541,941 | 07/08/2005 | Salvatore Proto | 141483.00007 | 8698 |
| 25207 | 7590 | 08/16/2006 | EXAMINER | |
| POWELL GOLDSTEIN LLP ONE ATLANTIC CENTER FOURTEENTH FLOOR 1201 WEST PEACHTREE STREET NW ATLANTA, GA 30309-3488 | | | OLSON, LARS A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3617 | |

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/541,941 | Applicant(s) PROTO, SALVATORE | |
| | Examiner Lars A. Olson | Art Unit 3617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. An amendment was received from the applicant on July 5, 2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6-8 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Leehey (US 2,926,623).

Leehey discloses the same device for a watercraft as claimed, as shown in Figure 1, that is comprised of one or more transversal elements, defined as Parts #20A, 22A and 24A, that are constrained to a bottom of said watercraft, defined as Part #10, by one or more support elements, defined as Part #20B, 22B and 24B, at a predetermined distance from the bottom of said watercraft, and are configured to increase the hydrodynamic lift on said bottom by means of a pressure difference between an upper surface and a lower surface of said transversal elements. Said transversal elements are shown in Figure 1 to have a V-shape that generally conform to the shape of the bottom of said watercraft. Said transversal elements can also be placed on the bottom of said watercraft at the center of gravity of said watercraft, as shown in Figure 1.

Leehey also discloses the same watercraft as claimed, as shown in Figure 1, that is comprised of a bottom having at least one lifting device, defined as Part #20, 22 and 24, that is comprised of one or more transversal elements, defined as Part #20A, 22A and 24A, that are constrained to a bottom of said watercraft at a predetermined distance from the bottom of said watercraft, and are configured to increase the hydrodynamic lift on said bottom by means of a pressure difference between an upper surface and a lower surface of said transversal elements.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leehey in view of Warner et al. (US 4,345,538).

Leehey, as set forth above, discloses all of the features claimed except for the use of a means for adjusting the inclination of at least a part of a surface of a transversal element.

Warner et al. discloses a hydrofoil device for watercraft, as shown in Figures 1-12, said device, defined as Part #14 or 18, including a flap, defined as Part #40, for adjusting the inclination of at least a part of said device, as shown in Figure 4.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a flap on a hydrofoil device, as taught by Warner et al., in combination with the device and watercraft as disclosed by Leehey for the purpose of providing a hydrofoil device with a means for controlling the amount of lift generated by said hydrofoil device.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leehey in view of Sachs (US 4,056,074).

Leehey, as set forth above, discloses all of the features claimed except for the use of a hydrofoil device with at least one support element having an opening.

Sachs discloses a hydrofoil device for a watercraft, as shown in Figures 1-16, said device, defined as Part #68, including at least one transversal member, defined as Part #72, and at least one support element, defined as Part #74, with an opening, as shown in Figure 1.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a hydrofoil device with a support element having an opening, as taught by Sachs, in combination with the device and watercraft as disclosed by Leehey for the purpose of providing a hydrofoil device with a support element that is lighter in weight.

Response to Arguments

7. Applicant's arguments filed on July 5, 2006 regarding claims 1-14 have been fully considered but they are not persuasive.

8. The applicant argues that Leehey (US 2,926,623) does not show all of the features as claimed by the applicant. The applicant also argues that there is no motivation to combine the device as disclosed by Leehey with the teachings of Sachs (US 4,056,074). The applicant further argues that there is no motivation to combine the device as disclosed by Leehey with the teachings of Warner et al. (US 4,345,538).

9. In response to the applicant's first argument, the applicant in claim 1 has claimed a device for a watercraft that is comprised of at least one transversal element that is constrained at a predetermined distance from the bottom of said watercraft, and is suitable to increase the hydrodynamic lift of said bottom. The applicant has thus claimed a hydrofoil for a watercraft in the broadest sense. The examiner has demonstrated that such a device is known in the art by citing the Leehey reference, which discloses a device for a watercraft that is comprised of one or more transversal elements that are V-shaped and are constrained to the bottom of said watercraft at a predetermined distance from the bottom of said watercraft, where said device is configured to increase the hydrodynamic lift on said bottom by means of a pressure difference between an upper surface and a lower surface of said transversal elements. Thus, Leehey clearly discloses all of the features as claimed by the applicant. Therefore, the rejection of claims 1-3, 6-8 and 10-14 is deemed proper and is not withdrawn.

10. In response to the applicant's second argument, the examiner relies upon the Sachs reference to disclose a hydrofoil device for a watercraft that includes at least one support element with an opening. There is sufficient motivation to combine the opening

in said support element as disclosed by Sachs with the device as disclosed by Leehey for the purpose of providing a hydrofoil device with a means for making said device lighter in weight. Therefore, the rejection of claim 9 is deemed proper and is not withdrawn.

11. In response to the applicant's third argument, the examiner relies upon the Warner et al. reference to disclose a hydrofoil device for a watercraft that includes a flap for adjusting the inclination of said device. There is sufficient motivation to combine the flap as disclosed by Warner et al. with the device as disclosed by Leehey for the purpose of providing a hydrofoil device with a means for controlling the amount of lift generated by said device. Therefore, the rejection of claims 4 and 5 is deemed proper and is not withdrawn.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication from the examiner should be directed to Exr. Lars Olson whose telephone number is (571) 272-6685.

lo

August 11, 2006

LARS A. OLSON
PRIMARY EXAMINER

Lars Olson
8/11/06